Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

HOLLINGSWORTH & VOSE COMPANY,

Petitioner,

v.

EVELYN DECUIR RUCKSTUHL and
RICHARD E. RUCHSTUHL,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Louisiana

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Due Process Clause of the Fourteenth Amendment permits the exercise of personal jurisdiction over a non-resident defendant based solely on that defendant's placement of a product into the stream of commerce.

PARTIES INVOLVED AND RULE 29.6 STATEMENT

All parties do not appear on the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows: plaintiffs are Evelyn DeCuir Ruckstuhl[1] and Richard Ruckstuhl. Defendants are Hollingsworth & Vose Company, Lorillard, Inc., Owens Corning Fiberglas Corporation, Owens-Illinois, Inc., Pittsburgh Corning Corporation, The Babcock and Wilcox Company, Combustion Engineering, Inc., Rapid American Corporation, Anco Insulations, Inc. and McCarty Corporation. Hollingsworth & Vose Company does not have a parent corporation and no publicy held company owns 10% or more of Hollingsworth & Vose Company's stock. Hollingsworth & Vose Company's non-wholly owned subsidiaries and affiliates are Neponset River Company and Hovomex, S.A.

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[1] After Petitioner filed its Declinatory Exception for Lack of Personal Jurisdiction, Evelyn Ruckstuhl died but her husband, Richard Ruckstuhl, is pursuing the claim.

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PETITION FOR WRIT OF CERTIORARI

Hollingsworth & Vose Company respectfully petitions for a writ of certiorari to review the judgment of the Louisiana Supreme Court in this case.

OPINIONS BELOW

The opinion of the Louisiana Supreme Court (App. 1-26, *infra*) is reported at 731 So.2d 881 (La. 1999). The opinion of the Louisiana Court of Appeals for the First Circuit (App. 27-38, *infra*) is reported at 709 So.2d 238 (La.App. 1 Cir. 1998). The opinion of the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana (App. 39-41, *infra*) is unreported.

JURISDICTION

The judgment of the Louisiana Supreme Court was entered on April 13, 1999. No petition for rehearing was filed. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend. 14, Section 1 provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or

> enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

Louisiana Revised Statute section 13:3201B provides:

> In addition to the provisions of [13:3201(A)], a court of this state may exercise personal jurisdiction over a nonresident on any basis consistent with the constitution of this state and the Constitution of the United States.

STATEMENT OF THE CASE

Respondents, Evelyn and Richard Ruckstuhl, sued Lorillard Tobacco Company, Petitioner Hollingsworth & Vose Company ("H&V"), and eight other defendants in January 1997, in the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana. They alleged that Mrs. Ruckstuhl developed mesothelioma, a cancer of the lining of the lung, as a result of her exposure to asbestos from two sources. (Trial Record at 3-8).[2] Respondents alleged that Mrs. Ruckstuhl was exposed to asbestos from smoking Kent cigarettes during the period in the 1950s when the Kent filter contained asbestos and also from asbestos brought home on the work clothes of her husband, an engineer at the Exxon facility in Baton Rouge. (T.R. at 5, ¶¶ 3-4).

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[2] All references to the trial record are hereinafter indicated by the abbreviation "T.R."

P. Lorillard Company, a predecessor to defendant Lorillard Tobacco Company, manufactured and sold Kent cigarettes with an asbestos-containing filter from 1952 to 1956. H&V Specialties Co., Inc. ("Specialties"), a former subsidiary of H&V, manufactured the asbestos-containing filtering material that Lorillard used to manufacture the filter for Kent cigarettes. The remaining eight defendants are asbestos manufacturers or suppliers that allegedly sold, distributed, or installed asbestos and asbestos-containing products at the Exxon facility. (T.R. at 3-4).

I. JURISDICTIONAL FACTS

H&V is a corporation organized and existing under the laws of the Commonwealth of Massachusetts, with its principal place of business in Walpole, Massachusetts. (T.R. at 68, ¶ 2). H&V does not have, and has never had, an office or other place of business in Louisiana. (T.R. at 68, ¶ 5). H&V has no employees or bank accounts in Louisiana. (T.R. at 68, ¶¶ 4 and 6). H&V does not maintain toll-free numbers for the use of Louisiana residents. (T.R. at 68, ¶ 7).

From February 1952 until May 1956, Specialties, a then-existing subsidiary of H&V, manufactured an asbestos-containing filtering material and sold large rolls of this material in bulk form to P. Lorillard Company, a predecessor to Lorillard Tobacco Company ("Lorillard"). (T.R. at 69, ¶¶ 10-12). Lorillard utilized the filtering material it bought from Specialties to manufacture the filters used on Lorillard's Kent cigarettes. (T.R. at 69, ¶ 11). Specialties manufactured the filtering material in Massachusetts and then shipped the material in bulk form to

Lorillard's factories in Louisville, Kentucky and Jersey City, New Jersey. (T.R. at 69, ¶ 12). These were the only two locations to which the filtering material was ever delivered.

Once the material was shipped to Lorillard, Specialties had no involvement in, or control over, the manufacture, marketing, or sale of Lorillard's end product, Kent cigarettes. (T.R. at 69, ¶¶ 11-12.) Specialties never manufactured or sold cigarettes, nor was Specialties a manufacturer or seller of cigarette filters. (*See id.*)

As the Louisiana Supreme Court noted, Kent cigarettes "entered Louisiana through the marketing and distribution practices of the end product manufacturer," *i.e.*, Lorillard. (App. 1). As the Louisiana Supreme Court further noted, there were no contacts between Specialties and Louisiana. (App. 8). Specialties was a corporation organized under the laws of the Commonwealth of Massachusetts with its principal place of business in Groton, Massachusetts. Specialties did not engage in the business of designing, manufacturing or selling filtering material in Louisiana. (T.R. at 69-70, ¶¶ 13-14). Specialties did not design the bulk filtering material for any Louisiana market, nor did it have any customers in Louisiana for its product. (T.R. at 69, ¶ 14). Specialties did not advertise or otherwise market its bulk filtering material in Louisiana (T.R. at 69, ¶¶ 13-14). Specialties never sold or delivered bulk filtering material in Louisiana. (T.R. at 69, ¶ 13). Moreover, Specialties did not maintain an office or obtain a license to do business in Louisiana. (T.R. at 69, ¶ 14). Specialties ceased production of the filtering material in May 1956 and was merged into H&V in 1957. (T.R. at 69, ¶¶ 10, 12).

II. PROCEEDINGS BELOW

A. DISTRICT COURT and COURT OF APPEAL

H&V moved to dismiss the complaint by filing a Declinatory Exception for Lack of Personal Jurisdiction in March 1997, contending that its lack of minimum contacts with Louisiana prohibited the exercise of jurisdiction under the Due Process Clause of the Fourteenth Amendment.[3] The District Court found:

> Hollingsworth & Vose do not have any business in Louisiana; they don't actively advertise and sell their product in Louisiana. They were not the ones that were advertising to sell this material. It was Lorillard who was advertising the sale of Kent cigarettes with the "Micronite Filter" . . . so it wasn't actually Hollingsworth & Vose doing this advertising and business in Louisiana.

(App. 41). Nevertheless, the District Court, based solely upon H&V's knowledge that Lorillard would generally market Kent cigarettes nationally, dismissed H&V's Declinatory Exception (motion to dismiss) and judgment was rendered on May 5, 1997. (App. 39). Subsequently, H&V appealed the District Court's ruling by applying for a supervisory writ sustaining H&V's Declinatory Exception for Lack of Personal Jurisdiction. The writ was granted on October 6, 1997. (T.R. at 211).

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[3] Under the Louisiana long-arm statute, La. R.S. 13:3201B, "the sole inquiry into jurisdiction over a nonresident is a one-step analysis of the constitutional due process requirements." *Petroleum Helicopters, Inc. v. Avco Corp.*, 513 So.2d 1188, 1192 (La. 1987).

On February 20, 1998, the Court of Appeal for the First Circuit, State of Louisiana (the "Court of Appeal") reversed the District Court's ruling, holding that the exercise of jurisdiction over H&V was improper. In declining to exercise jurisdiction over H&V, the Court of Appeal adopted Justice O'Connor's stream of commerce *plus* doctrine articulated in *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102 (1987). The Court of Appeal held: "a defendant's awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum state." (App. 37). Citing *Lesnick v. Hollingsworth & Vose Company*, 35 F.3d 939, 946-47 (4th Cir. 1994), *cert. denied*, 513 U.S. 1151 (1995), the court held that H&V's arrangement with Lorillard did not give rise to jurisdiction because that arrangement "does not indicate an intent or purpose by H&V to specifically serve the Louisiana market." (App. 37). Given that "the only conduct of H&V geared toward Louisiana was the placement of the filter media into the stream of commerce" the Court of Appeal held that the Respondents "failed to prove that H&V established sufficient minimum contacts with Louisiana." (App. 37).

B. LOUISIANA SUPREME COURT

On June 19, 1998, the Louisiana Supreme Court granted the plaintiff's writ of certiorari to resolve the stream of commerce issue. As stated by the court:

> The paramount issue in this case is whether the "minimum contacts" prong of the due process test can be met under the U.S. Constitution where a component parts manufacturer sells all

> of his product to an end product manufacturer with the knowledge that the end product will reach the forum state through the marketing and distribution processes of the end product's manufacturer, but has no direct contact with the forum state.

(App. 8). The court reversed the Court of Appeal on April 13, 1999, concluding that H&V was subject to jurisdiction in Louisiana because H&V knew that *Lorillard* would sell Kent cigarettes containing H&V's filtering material "on a large scale basis nationwide." (App. 18). The court did not require any conduct of H&V specifically directed to Louisiana and there was no such conduct. The court therefore utilized the *pure* stream of commerce theory previously articulated by Justice Brennan despite its decision not to expressly adopt that theory. (App. 15). The court acknowledged that the opposite result was reached by the United States Court of Appeals for the Fourth Circuit in *Lesnick v. Hollingsworth & Vose Company*, 35 F.3d 939 (4th Cir. 1994), in which the Fourth Circuit adopted Justice O'Connor's stream of commerce *plus* theory.

The Louisiana Supreme Court noted that this Court has not addressed the question presented by this petition "since the serious split of opinion over the stream of commerce theory versus the stream of commerce plus theory in *Asahi* in 1987." (App. 14 n.7). The court also observed that there was "no Supreme Court precedent that guides us as to which theory, if either, represents the law." (App. 15). The court in effect invited this Court to settle the question presented in this petition:

> [S]ince *Asahi* was decided, all four justices favoring the stream of commerce theory have left the Court, while three of the four justices who voted for the stream of commerce plus theory remain on the Court, along with Justice Stevens. Finally, Justice Breyer, Ginsberg, Kennedy, Souter, and Thomas have joined the Court and their views on the stream of commerce issue are unknown.

(App. 14 n.7). The court nevertheless utilized the stream of commerce theory espoused by Justice Brennan and held that H&V is subject to personal jurisdiction in Louisiana based upon the activity of another company, Lorillard, over whom H&V exercised no control.

In dissent, Justice Traylor noted that the majority's decision "clearly utilizes" Justice Brennan's stream of commerce theory. (App. 22). The dissent rejected that theory, concluding that "Specialties' placement of the bulk filter media into the stream of commerce, without other conduct directed toward Louisiana, is not an act purposefully directed toward Louisiana." (App. 23-24). Moreover, Lorillard's contacts with Louisiana could not be imputed to H&V:

> The business arrangement between Lorillard and H&V did not rise to the level of establishing personal jurisdiction over H&V and/or Specialties because none of its conduct was in any way directed toward Louisiana. Specialties clearly had no involvement in the manufacturing, sale, or distribution of Kent cigarettes. Its relationship with Lorillard was that of a supplier; Specialties manufactured the bulk filter material in Massachusetts and shipped it

> directly to Lorillard's plants in New Jersey and Kentucky.

(App. 21-22). The dissent therefore concluded that the exercise of jurisdiction over H&V in this case was improper.

REASONS FOR GRANTING THE WRIT

This case raises the issue that divided this Court over a decade ago in *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102 (1987), namely, whether the mere placement of a product into the stream of commerce is sufficient to establish personal jurisdiction over a defendant without the need to show additional conduct by the defendant aimed at the forum state. That recurring issue has divided the lower state and federal courts. Indeed, the treatment which H&V has received from different courts illustrates this conflict. In contrast to the decision of the Louisiana Supreme Court, H&V was held not to be subject to personal jurisdiction by the United States Court of Appeals for the Fourth Circuit in *Lesnick v. Hollingsworth & Vose Co.*, 35 F.3d 939 (4th Cir. 1994), *cert. denied*, 513 U.S. 1151 (1995), for precisely the same conduct at issue in the instant action. Moreover, the issue presented is important not only because of the frequency with which it arises, but also because of the uncertainty and confusion that burdens commerce, defendants, and the courts as a result of the lack of guidance from this Court. Since the Louisiana Supreme Court's decision below utilizes Justice Brennan's stream of commerce theory in the context of an unambiguous factual record, further review is warranted.

1. The Louisiana Supreme Court's Stream Of Commerce Analysis Squarely Presents The Issue That Divided This Court In *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102 (1987).

By grounding personal jurisdiction in a stream of commerce analysis, the Louisiana Supreme Court decided the issue that divided this Court in *Asahi*. In her opinion in *Asahi*, Justice O'Connor, for four members of the Court, rejected the stream of commerce analysis of the lower courts, stating, "a defendant's awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum State." 480 U.S. at 112. Conversely, Justice Brennan, in a separate opinion for four justices, concluded that such conduct would suffice to establish personal jurisdiction. *Id.* at 117.

Justice Brennan's stream of commerce theory has its genesis in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), where this Court discussed, but did not sustain, the exercise of personal jurisdiction based solely on placement of an article into the stream of commerce. There, this Court concluded, with Justice Brennan dissenting, that Oklahoma courts could not exercise personal jurisdiction over New York sellers of an automobile driven to Oklahoma by the purchasers merely because it was foreseeable that the automobile might end up in Oklahoma. *See id.* at 295. In so concluding, the Court reaffirmed the long-standing principle that "the foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the

forum state," *id.* at 297, and that "[t]he unilateral activity of those who claim some relationship with a non-resident defendant cannot satisfy the requirement of contact with the forum State." *Id.* at 298, *quoting Hanson v. Denckla*, 357 U.S. 235, 253 (1958). It is in this context that the Court pronounced its stream of commerce *dictum* in *World-Wide Volkswagen*.

As noted in the dissenting opinion below, the Louisiana Supreme Court's decision "clearly utilizes" Justice Brennan's stream of commerce theory, despite the court's statement to the contrary. (App. 22). The court noted that H&V had "no direct contact with the forum state," (App. 8), and the facts relied upon by the court do not reflect forum-focused conduct by H&V. These facts relate solely to the actions of a wholly independent company, *Lorillard*, in the marketing and sale of a separate product, *Kent cigarettes*. The court cited *Lorillard's* general advertising of Kent cigarettes and the volume of *Lorillard's* nationwide sales of Kent cigarettes in support of its decision. (App. 16-18). The court noted, and the record in this case is clear, however, that H&V had no involvement whatsoever in the marketing, sale, or distribution of Kent cigarettes by Lorillard.[4] The record is equally clear that H&V had

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[4] The Louisiana Supreme Court noted that Kent cigarettes "entered Louisiana through the marketing and distribution practices of the end product manufacturer," *i.e.*, Lorillard. (App. 1). That Lorillard extolled the benefits of the Kent filter in its advertising is unremarkable. The trial court's factual finding that H&V "were not the ones that were advertising to sell this material. It was Lorillard who was advertising the sale of Kent cigarettes with the 'Micronite Filter' . . . " is undisputed. The Louisiana Supreme Court's reliance upon *Lorillard's* advertising

no right to control Lorillard's activity in this regard. It is undisputed that Lorillard sold its own product on its own behalf; it was not H&V's agent or distributor and it never sold H&V's bulk material.

The Louisiana Supreme Court asserted jurisdiction over H&V based upon the mere foreseeability that Lorillard's nationwide sales of Kent cigarettes would result in sales to any one state, including Louisiana.[5] The court's decision is thus a direct application of Justice Brennan's stream of commerce theory which permits the assertion of jurisdiction over a defendant based solely upon the defendant's awareness that the stream of commerce may or will sweep its product into the forum state. *Asahi*, 480 U.S. at 117.

The record is clear that there is no "additional conduct" by H&V directed toward Louisiana as required by Justice O'Connor's formulation in *Asahi*. Accordingly, it was necessary for the Louisiana Supreme Court, as it would be for this Court, to decide whether in the absence of such conduct jurisdiction may be predicated solely on the placement of an article into the stream of commerce.

The stream of commerce issue remains unresolved by a majority of this Court. The need for guidance from this Court is acute because of the frequency with which this issue arises, particularly with respect to component part

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for Kent cigarettes in the "national marketplace," (App. 17-18), demonstrates the court's use of Justice Brennan's stream of commerce theory as the basis of jurisdiction in this case.

[5] Indeed, the trial court stated that "whether H&V knew its product would end up in Louisiana, I don't know." (App. 41).

manufacturers in the product liability area. The undisputed facts in this case present these issues clearly and offer a timely opportunity for the Court to provide that guidance in this important area of federal constitutional law. Therefore, the Court should grant the petition.

2. The Louisiana Supreme Court's Opinion Conflicts With The Fourth Circuit's Stream Of Commerce Holding In *Lesnick v. Hollingsworth & Vose Co.*, 35 F.3d 939 (4th Cir. 1994), And Aggravates The Existing Split Of Authority In The United States Courts Of Appeals And State Courts Of Last Resort.

The decision of the Louisiana Supreme Court below is in direct conflict with the decision of the United States Court of Appeals for the Fourth Circuit in *Lesnick v. Hollingsworth & Vose Co.*, 35 F.3d 939 (4th Cir. 1994), *cert. denied*, 513 U.S. 1151 (1995). In *Lesnick*, the Fourth Circuit adopted Justice O'Connor's stream of commerce *plus* doctrine and held that H&V was not subject to jurisdiction in Maryland based on the same facts presented in this case.[6]

As in this case, the plaintiff in *Lesnick* alleged that the decedent died as a result of smoking Kent cigarettes with asbestos-containing filters during the 1950s. *Lesnick*, 35 F.3d at 940. The plaintiff in *Lesnick* also sought to establish personal jurisdiction over H&V based upon Lorillard's nationwide sales of Kent cigarettes from 1952

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[6] In its decision below, the Louisiana Court of Appeal recognized that the circumstances of *Lesnick* and this case are "factually identical." (App. 37 n.5).

to 1956. In *Lesnick*, as in this case, H&V did not specifically direct any conduct toward the forum state.[7] *Id.* at 947. H&V's action in both cases was limited to placing its product into the stream of commerce with the knowledge that Lorillard would sell Kent cigarettes containing its filtering material on a national level. *Id.* at 946.

Applying Justice O'Connor's stream of commerce *plus* test, the Fourth Circuit held that there was no "additional conduct" directed towards Maryland to permit the exercise of jurisdiction over H&V in that state. The court held that Lorillard's jurisdictional contacts with Maryland were not attributable to H&V. *Lesnick*, 35 F.3d at 947. The court noted that H&V's arrangement with Lorillard related "only to Hollingsworth & Vose's agreement to supply filters [sic][8] from its plant in Massachusetts to Lorillard in Kentucky and New Jersey." *Id.* Accordingly, on these facts, H&V could only be subject to specific jurisdiction by application of Justice Brennan's *pure* stream of commerce theory, which the Fourth Circuit expressly rejected. *Id.* at 946.

In contrast, the Louisiana Supreme Court utilized Justice Brennan's stream of commerce theory to assert specific jurisdiction over H&V based upon the marketing and sales activity of Lorillard, activity over which H&V

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[7] In *Lesnick*, as in this case, H&V had no presence in the forum state by having any office, agents, or employees there. H&V had no customers in Maryland, was not registered to do business there, and directed no marketing efforts towards Maryland. *Lesnick*, 35 F.3d at 946.

[8] In fact, as noted above, H&V did not supply filters to Lorillard, but rather large rolls of filtering material in bulk form.

had neither influence nor control. The decisions of the Fourth Circuit in *Lesnick* and the Louisiana Supreme Court below are therefore irreconcilable.

The conflict between the Fourth Circuit and the Louisiana Supreme Court over whether the stream of commerce theory provides a sufficient basis for the exercise of personal jurisdiction divides other United States Courts of Appeals and state courts of last resort. The First and Fourth Circuits have refused to ground jurisdiction solely on the act of placing a product into the stream of commerce. *See Alers-Rodriquez v. Fullerton Tires Corp.*, 115 F.3d 81, 85 (1st Cir. 1997); *Boit v. Gar-Tec Prods., Inc.*, 967 F.2d 671, 681-83 (1st Cir. 1992); *Lesnick v. Hollingsworth & Vose Co.*, 35 F.3d 939, 946 (4th Cir. 1994). The Ninth Circuit has tentatively embraced the "stream of commerce" *plus* theory articulated by Justice O'Connor in *Asahi*. *See Omeluk v. Langsten Slip and Batbyggeri A/S*, 52 F.3d 267, 271 (9th Cir. 1995); *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 418 (9th Cir. 1997). In addition, the Sixth Circuit has noted that mere placement of a product into the stream of commerce is "at best a dubious ground for jurisdiction." *Compuserve Inc. v. Patterson*, 89 F.3d 1257, 1265 (6th Cir. 1996).

On the other hand, the Fifth and Seventh Circuits have adopted Justice Brennan's *pure* stream of commerce theory. *See Irving v. Owens-Corning Fiberglas Corp.*, 864 F.2d 383, 385-86 (5th Cir.), *cert. denied*, 493 U.S. 823 (1989); *Bean Dredging Corp. v. Dredge Technology Corp.*, 744 F.2d 1081, 1084-85 (5th Cir. 1984); *Dehmlow v. Austin Fireworks*, 963 F.2d 941, 946-47 (7th Cir. 1992). The Eighth Circuit, while not expressly adopting the stream of commerce theory, has intimated its approval of that theory under

certain circumstances. *See Barone v. Rich Bros. Interstate Display Fireworks Co.*, 25 F.3d 610, 614-15 (8th Cir.), *cert. denied, Hosoya Fireworks Co. v. Barone*, 513 U.S. 948 (1994).

This divergence of views is present in the state courts of last resort as well. The highest courts in Rhode Island, Texas, Nebraska, and Mississippi have either adopted or indicated their approval of Justice O'Connor's stream of commerce *plus* formulation. *See Anderson et al. v. Metropolitan Life Ins. Co., et al.*, 694 A.2d 701, 703 (R.I. 1997); *CMMC v. Salinas*, 929 S.W.2d 435 (Tex. 1996); *Wagner, et al. v. Unicord Corp.*, 526 N.W.2d 74, 79 (Neb. 1995); *Sorrells v. R&R Custom Coach Works, Inc.*, 636 So.2d 668 (Miss. 1994). In contrast, the highest courts in Washington, West Virginia, and Utah have either adopted or indicated their approval of Justice Brennan's stream of commerce theory. *See Hill by Hill v. Showa Denko, K.K.*, 425 S.E.2d 609 (W.Va. 1992), *cert. denied*, 508 U.S. 908 (1993); *Grange Ins. Ass'n v. Washington*, 757 P.2d 933, 938 (Wash. 1988), *cert. denied*, 490 U.S. 1004 (1989); *Arguello v. Industrial Woodworking Machine Co.*, 838 P.2d 1120, 1124 (Utah 1992).

The widespread and recurring conflict concerning the validity of the stream of commerce theory – with the attendant uncertainty and confusion that burdens commerce, defendants, and the courts – remains in the wake of *Asahi* and calls for this Court's review. Absent review by this Court, defendants remain unable to predict with any certainty where they will be subject to jurisdiction. Only when this issue is resolved will a defendant have "clear notice that it is subject to suit [in a forum], and can

act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State." *World-Wide Volkswagen Corp.*, 444 U.S. at 297-298. This case presents an opportunity for the Court to resolve the controversy surrounding the stream of commerce theory and to bring certainty and uniformity to this important area of federal constitutional law. Therefore, the Court should grant the petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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SUPREME COURT OF LOUISIANA

No. 98-CC-1126

Apr. 13, 1999

EVELYN DECUIR RUCKSTUHL AND RICHARD E. RUCHSTUHL

Versus

OWENS CORNING FIBERGLAS CORPORATION, ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, FIRST CIRCUIT, PARISH OF EAST BATON ROUGE

VICTORY, J.*

We granted this writ to determine whether this state may exercise personal jurisdiction over a nonresident corporate defendant who manufactured and supplied, in vast quantities, a major component part of a product which entered Louisiana through the marketing and distribution practices of the end product manufacturer and purportedly injured a Louisiana resident.

FACTS AND PROCEDURAL HISTORY

In March of 1996, Evelyn Ruckstuhl, a resident of East Baton Rouge Parish, was diagnosed with malignant mesothelioma, a form of lung cancer, as a result of exposure to asbestos. Mr. and Mrs. Ruckstuhl filed a petition

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* Kimball, J., not on panel. Rule IV, Part 2, § 3.

for damages against ten defendants[1], including Hollingsworth and Vose Company ("H & V"), Vose [sic] Specialties Co., Inc. ("Specialties"), and Lorillard Tobacco Company ("Lorillard"), in the parish of East Baton Rouge on January 13, 1997. Plaintiffs allege that between 1952 and 1959, Mrs. Ruckstuhl inhaled asbestos fibers and dust from her husband's work clothes during his employment at the Exxon refinery and that she smoked Kent cigarettes with a "Micronite" filter containing crocidolite asbestos. They assert that during that period, H & V and/or its wholly owned subsidiary, Specialties, manufactured, sold, and/or distributed the asbestos-containing filter material to Lorillard, which was then used by Lorillard to create the Micronite filter, a component part incorporated into Kent cigarettes that were distributed throughout the nation. Plaintiffs argue that H & V clearly "delivered its product into the stream of commerce with the expectation that its filters would be purchased along with the Kent cigarettes in Louisiana" since approximately 13 billion Kent cigarettes were sold during this period containing the Micronite filters with the asbestos manufactured by H & V. Plaintiffs further point out that the Kent Micronite filter was extensively advertised nationally, both in print and on television.

On March 20, 1997, H & V timely filed a Declinatory Exception of Lack of Personal Jurisdiction supported by

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[1] The other eight defendants are Owens-Corning Fiberglas Corporation, Owens-Illinois, Inc., Pittsburgh Corning Corporation, The Babcock & Wilcox Company, Combustion Engineering, Inc., Rapid American Corporation, Anco Insulations, Inc., and McCarty Corporation.

an affidavit executed by Paul Walker, Director of Regulatory Affairs at H & V. According to the affidavit, Specialties was a wholly-owned subsidiary of H & V which entered into a contract with Lorillard in February 1952, whereby Specialties would manufacture bulk filter material for Lorillard to use in the Kent Micronite filter. Specialties manufactured the filter material in Massachusetts from early 1952, the date of its incorporation, until May 1956, before being merged into H & V in 1957. The bulk filter media was shipped directly from Specialties' plants in Massachusetts to Lorillard's manufacturing plants in New Jersey and Kentucky, where it was incorporated into the Micronite filter. The affidavit further states that Specialties never sold, delivered, advertised, or marketed its filter material in Louisiana, did not design the filter media for any Louisiana market, did not have any Louisiana customers for such product, and did not maintain an office or obtain a license to do business in Louisiana. Moreover, the affidavit states that H & V has never had an office or other place of business in Louisiana, does not have any employees in Louisiana, is not registered to do business in Louisiana, does not maintain any bank accounts in Louisiana, and does not maintain toll-free numbers for the use of Louisiana residents.

Following oral arguments, the trial court denied H & V's exception. H & V timely filed its application for supervisory writs with the court of appeal and on February 20, 1998, the First Circuit reversed the district court's ruling and granted H & V's declinatory exception. In so holding, the First Circuit adopted the "stream of commerce plus" theory as articulated by Justice O'Connor in Part II-A of her opinion in ***Asahi Metal Industry Co., Ltd.***

v. Superior Court of California, Solano County, 480 U.S. 102, 107 S.Ct. 1026 (1987), and held that H & V's placement of the filter media into the stream of commerce was insufficient to establish sufficient minimum contacts with Louisiana. ***Ruckstuhl v. Owens Corning Fiberglas Corp.***, 97-1132 (La.App. 1st Cir. 2/20/98), 709 So.2d 238, 242. We granted plaintiff's writ to consider whether this ruling was correct. ***Ruckstuhl v. Owens Corning Fiberglas Corp.***, 98-C-1126 (La. 6/19/98), 720 So.2d 1208.

DISCUSSION

Historically, the jurisdiction of the state courts to render judgments *in personam* was limited to a defendant's physical presence within the court's territorial jurisdiction. ***Pennoyer v. Neff***, 95 U.S. 714, 733 (1877). However, recognizing the realities of modern commercial life, the United States Supreme Court in ***International Shoe Co. v. Washington***, 326 U.S. 310 (1945), rejected the legal fiction of "presence" and instead focused its attention on the due process aspect of personal jurisdiction. The Court held that subjecting a nonresident defendant to a judgment *in personam* requires that he must "have certain minimum contacts with [the state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' " ***International Shoe***, 326 U.S. at 316 (*citing* ***Milliken v. Meyer***, 311 U.S. 457, 463 (1940)). Further, "[w]hether due process is satisfied must depend . . . upon the quality and nature of the activity in relation to the fair and orderly administration of the laws." ***Id.*** at 319.

The Louisiana legislature enacted Louisiana's first Long-arm Statute in 1964 in order "to permit the courts of this state to tap the full potential of jurisdiction *in personam* over nonresidents permitted by ***International Shoe Co. v. State of Washington***, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95, 161 A.L.R. 1057 (1945); and ***McGee v. International Life Insurance Company***, 355 U.S. 220, 78 S.Ct. 199, 2 L.Ed.2d 223 (1957)." La. R.S. 13:3201, Comment (a).

The original statute, La. R.S. 13:3201, listed specific activities by a defendant which would subject it to the personal jurisdiction of this state.[2] In reaction to the

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[2] Originally, La. R.S. 13:3201 provided:

> A court may exercise personal jurisdiction over a nonresident, who acts directly or by an agent, as to a cause of action arising from the non-resident's:
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> (a) transacting any business in this state;
>
> (b) contracting to supply services or things in this state;
>
> (c) causing injury or damage by an offense or quasi offense committed through an act or omission in this state;
>
> (d) causing injury or damage in this state by an offense or quasi offense committed through an act or omission outside of this state if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this state; or
>
> (e) having an interest in, using, or possessing a real or immovable property in this state.

In addition, La. R.S. 13:3202 expressly limited La.R.S. 13:3201 to causes of action arising from acts or omissions enumerated therein.

decision of the United States Supreme Court in ***World-Wide Volkswagen Corp. v. Woodson,*** 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980), in 1984, Subsection (h) was added[3] to provide for jurisdiction over a cause of action arising from a nonresident's:

> Manufacturing of a product or component thereof which caused damage or injury in this state, if at the time of placing the product into the stream of commerce, the manufacturer could have foreseen, realized, expected, or anticipated that the product may eventually be found in this state by reason of its nature and the manufacturer's marketing practices.

However, realizing that the Long-arm Statute still did not really extend to the limits allowed by due process, in 1987, the legislature amended La. R.S. 13:3201 by Acts 1987, No. 418 to add Subsection B which provides:

> In addition to the provisions of [13:3201(A)], a court of this state may exercise personal jurisdiction over a nonresident on any basis consistent with the constitution of this state and the Constitution of the United States.

Thus, although the legislature adopted the stream of commerce language from ***World-Wide Volkswagen*** in enacting La. R.S. 13:3201A(8), our relevant inquiry is properly directed at the broader jurisdictional provision, La. R.S. 13:3201B, which was intended to allow Louisiana courts to exercise personal jurisdiction over non-resident defendants to the fullest extent allowed by the United

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[3] In 1984, the designations were also changed from letters to numerals such that Subsection (h) is now Subsection (8).

States Constitution, even if non-resident's conduct is not specifically listed in the provisions of La.R.S. 13:3201A..

Accordingly, "[t]he limits of the Louisiana Long-arm Statute and the limits of constitutional due process are now coextensive." ***Petroleum Helicopters, Inc. v. Avco Corp.***, 513 So.2d 1188, 1192 (La. 1987). "Now, under the express wording of the present Long-arm Statute, the sole inquiry into jurisdiction over a nonresident is a one-step analysis of the constitutional due process requirements." ***Id.***

The Due Process Test

The due process test first enunciated in ***International Shoe*** requires that in order to subject a nonresident defendant to a personal judgment, the defendant must have certain minimum contacts with the forum state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. ***International Shoe***, *supra*, 326 U.S. at 320, 66 S.Ct. at 160. The test has been interpreted by the United States Supreme Court in a series of cases since ***International Shoe***. *See* ***Superior Supply Co. v. Associated Pipe & Supply Co.***, 515 So.2d 790, 792-796 (La. 1987) for a summary of each of these cases.

The test has evolved into a two-part test, the first part being the "minimum contacts" prong, which is satisfied by a single act or actions by which the defendant "purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws." ***Burger King Corp. v. Rudzewicz***, 471 U.S. 462, 475, 105 S.Ct. 2174, 2183, 85 L.Ed.2d 528 (1985); ***Hanson v. Denckla***, 357 U.S. 235, 253,

78 S.Ct. 1228, 1239, 2 L.Ed.2d 1283 (1958). The nonresident's "purposeful availment" must be such that the defendant "should reasonably anticipate being haled into court" in the forum state. ***World-Wide Volkswagen Corp. v. Woodson,*** *supra,* 444 U.S. at 297.

The second part of the due process test centers around the fairness of the assertion of jurisdiction. Hence, once the plaintiff meets his burden of proving minimum contacts, "a presumption of reasonableness of jurisdiction arises" and "the burden then shifts to the opposing party to prove the assertion of jurisdiction would be so unreasonable in light of traditional notions of fair play and substantial justice as to overcome the presumption of reasonableness created by the defendant's minimum contacts with the forum." ***de Reyes v. Marine Management and Consulting, Ltd.,*** 586 So.2d 103, 107 (La. 1991) (citing 4 Charles A. Wright and Arthur R. Miller, Federal Practice and Procedure Sec. 1067, pp. 301-302).

Minimum Contacts

The paramount issue in this case is whether the "minimum contacts" prong of the due process test can be met under the U.S. Constitution where a component parts manufacturer sells all of his product to an end product manufacturer with the knowledge that the end product will reach the forum state through the marketing and distribution processes of the end product's manufacturer, but has no direct contact with the state.

In 1980, the United States Supreme Court, in ***World-Wide Volkswagen v. Woodson,*** held that Oklahoma could not subject a New York corporate retail automobile *dealer*

to jurisdiction for a product liability claim arising from an Oklahoma automobile accident where the plaintiffs had purchased their car in New York when they were New York residents. ***World-Wide Volkswagen v. Woodson,*** *supra*. Joined as defendants were the manufacturer, the importer, the regional distributor, and the retail dealer, but only the distributor and dealer, both New York corporations, challenged jurisdiction. The Court held that the Oklahoma court lacked jurisdiction over the distributor and dealer based on this one isolated and fortuitous circumstance that the automobile happened to suffer an accident as the plaintiff brought it into Oklahoma. As the Court noted, there was a "total absence of those affiliating circumstances that are a necessary predicate to any exercise of state-court jurisdiction" over the distributor and dealer. ***Id.***, 444 U.S. at 295. The distributor and the dealer carried on no activity in Oklahoma, closed no sales and performed no services in Oklahoma, solicited no business in Oklahoma, directed no advertisement in Oklahoma, and did not "regularly sell cars at wholesale or retail to Oklahoma customers or residents or that they indirectly, through others, serve or seek to serve the Oklahoma market." ***Id.***, 444 U.S. at 296. Significantly, the Court noted that "the mere 'unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State.' " ***Id.*** (*citing* **Hanson v. Denckla,** *supra*).

However, after expressing this limitation as it applied to retail dealers and regional distributors, the Court stated:

> When a corporation "purposefully avails itself of the privilege of conducting activities within

> the forum State," *Hanson v. Denckla*, 357 U.S. at 253, 78 S.Ct. at 1240, it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State. Hence if the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State. *Cf.* ***Gray v. American Radiator & Standard Sanitary Corp.***, 22 Ill.2d 432, 176 N.E.2d 761 (1961).

Id., 444 U.S. at 297-298.[4] The above language from ***World-Wide Volkswagen*** recognizes the "stream of commerce"

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[4] This Court has noted the difference, in the context of personal jurisdiction in products liability cases, between a manufacturer and a distributor. ***McBead Drilling Co. v. Kremco, Ltd.***, 509 So.2d 429, 432 (La.1987) (holding that "[i]n litigation arising from a product related injury in the forum state, there are significant differences between the exercise of jurisdiction over a retailer who simply sold the product locally and the exercise of jurisdiction over a manufacturer whose products were sold over a large area.").

theory. However, because the example used by the Court was directed at manufacturers and distributors such as Audi and Volkswagen, and only the retail dealer and regional distributor were contesting jurisdiction, the "stream of commerce" language of ***World-Wide Volkswagen*** is dicta. *See also* ***Howard B. Stravitz, Sayonara to Minimum Contacts: Asahi Metal Industry Co. v. Superior Court***, 39 S.C.L.Rev. 729, 761, 786, 788 (1988).

This dicta in ***World-Wide Volkswagen*** was the subject of a sharply divided Court in 1987 in ***Asahi Metal Industry Co., Ltd.***, *supra*. There, the Court held that it would be a denial of due process to subject a Japanese manufacturer of a motorcycle tire valve assembly to jurisdiction in California for an indemnification claim, the only claim remaining in the suit, asserted by the tire manufacturer, a Taiwanese corporation, in a product liability suit based on a California accident. All of the justices, except Justice Scalia, agreed that the second prong of the Due Process test, the "fairness" prong, had not been met. However, the Court was split on whether the first prong, the "minimum contacts" test, had been shown.

Justice O'Connor, who authored the plurality opinion of the Court in ***Asahi***, was joined by three other justices, Chief Justice Rehnquist, and Justices Powell and Scalia, in requiring "additional conduct" by the defendant to support personal jurisdiction under the stream of commerce theory:

> The substantial connection between the defendant and the forum state necessary for a finding of minimum contacts must come about by an action of the defendant purposefully directed toward the forum state. The placement of a

> product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum state . . . [A] defendant's awareness that the stream of commerce may or will sweep the product into the forum state does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum state.

Asahi, supra, 480 U.S. at 112, 107 S.Ct. at 1032 (cites omitted). This theory is referred to as the "stream of commerce plus" theory.[5]

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[5] Federal circuit courts are somewhat divided on whether to apply the "stream of commerce" theory or the "stream of commerce plus" theory. Some courts have accepted Justice O'Connor's opinion rejecting the stream of commerce theory as a means of satisfying the purposeful availment requirement. ***Boit v. Gar-Tec Prods., Inc.***, 967 F.2d 671 (1st Cir. 1992); ***Lesnick v. Hollingsworth & Vose Co.***, 35 F.3d 939 (4th Cir. 1994), *cert. denied,* 513 U.S. 1151, 115 S.Ct. 1103 (1995). Other courts addressing whether ***Asahi*** overturned the stream of commerce theory have resoundingly concluded that it did not. *See e.g.,* ***Barone v. Rich Bros. Interstate Display Fireworks Co.***, 25 F.3d 610 (8th Cir. 1994), ***cert. denied sub nom., Hosoya Fireworks Co., Ltd. v. Barone***, 513 U.S. 948, 115 S.Ct. 3599 (1994); ***Ruston Gas Turbines, Inc. v. Donaldson Co. Inc.***, 9 F.3d 415 (5th Cir. 1993); ***Dehmlow v. Austin Fireworks***, 963 F.2d 941 (7th Cir. 1992). However, most courts have chosen to avoid taking a position, attempting when possible to decide the case on the basis of the facts in the record. *See* ***OMI Holdings, Inc. v. Royal Ins. Co. of Canada***, 149 F.3d 1086 (10th Cir. 1998); ***Renner v. Lanard Toys Ltd.***, 33 F.3d 277 (3rd Cir. 1994); ***Beverly Hills Fan Co. v. Royal Sovereign Corp.***, 21 F.3d 1558, 1566 (Fed. Cir. 1994), ***cert. dismissed***, 512 U.S. 1273, 115 S.Ct. 18 (1994) and ***Tobin v. Astra Pharmaceutical Products., Inc.***, 993 F.2d 528 (6th Cir. 1993), ***cert. denied sub nom., Duphar v. Tobin***, 510 U.S. 914, 114 S.Ct. 304 (1994) (both essentially rejecting Justice O'Connor's view, but finding sufficient additional contacts to satisfy it, as well as t

Four of the justices in ***Asahi*** expressly disagreed with Justice O'Connor's "stream of commerce plus" theory and reaffirmed their interpretation of the "stream of commerce" language from ***World-Wide Volkswagen***. In his concurring opinion, Justice Brennan (joined by Justices White, Marshall, and Blackmun) expressed that he did "not agree with the interpretation in Part II-A of the stream-of-commerce theory, *nor with the conclusion that Asahi did not 'purposefully avail itself of the California market.'* "[6] 480 U.S. at 116 (emphasis added). Finally, the ninth justice, Justice Stevens, stated that it was unnecessary to discuss minimum contacts when reversal could be supported on fairness grounds. Justice Stevens, however, did express his view as to whether or not the conduct of the component parts manufacturer rose to the level of "purposeful availment:"

> Second, even assuming that the test ought to be formulated here, Part II-A misapplies it to the

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stream of commerce theory); ***Vermeulen v. Renault, U.S.A., Inc.***, 985 F.2d 1534, 1548 (11th Cir. 1993), ***cert. denied***, 508 U.S. 907, 113 S.Ct. 2334 (1993); ***Shute v. Carnival Cruise Lines***, 897 F.2d 377, 382 n. 3 (9th Cir. 1990), rev'd on other grounds, 499 U.S. 585, 111 S.Ct. 1522 (1991); ***North American Philips Corp. v. American Vending Sales, Inc.***, 35 F.3d 1576 (Fed. Cir. 1994) (hinting its approval for the stream of commerce theory by approving jurisdiction over a defendant who was conscious that his product would reach the forum state).

[6] As Justice Brennan's concurrence stated: "[t]he stream of commerce refers not to unpredictable currents or eddies, but to the regular and anticipated flow of products from manufacture to distribution to retail sale." ***Asahi***, *supra*, 480 U.S. at 117. "As long as a participant in the process is aware that the final product is being marketed in the forum state, the possibility of a law suit there cannot come as a surprise." ***Id.***

> facts of this case. The plurality seems to assume that an unwavering line can be drawn between "mere awareness" that a component will find its way into the forum State and "purposeful availment" of the forum's market. Ante, at 1033. Over the course of its dealings with Cheng Shin, ***Asahi*** *has arguably engaged in a higher quantum of conduct than "[t]he placement of a product into the stream of commerce, without more. . . . "* ***Ibid.*** *Whether or not this conduct rises to the level of purposeful availment requires a constitutional determination that is affected by the volume, the value, and the hazardous character of the components. In most circumstances I would be inclined to conclude that a regular course of dealing that results in deliveries of over 100,000 units annually over a period of several years would constitute "purposeful availment" even though the item delivered to the forum State was a standard product marketed throughout the world.*

107 S.Ct. at 1038 (emphasis added).[7]

In the case at bar, the court of appeal found that "the ***Asahi*** approach more accurately reflects the due process protections afforded under the United States Constitution and more closely comports with the purposes of due

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[7] Since the serious split of opinion by the United States Supreme Court over the stream of commerce theory versus the stream of commerce plus theory in ***Asahi*** in 1987, that Court has not addressed the issue. Further, since ***Asahi*** was decided, all four justices favoring the stream of commerce theory have left the Court, yet three of the four justices who voted for the stream of commerce plus theory remain on the Court, along with Justice Stevens. Finally, Justices Breyer, Ginsberg, Kennedy, Souter, and Thomas have joined the Court and their views on the stream of commerce issue are unknown.

process." Thus, the court of appeal applied the "stream of commerce plus" theory and found that the plaintiffs failed to prove that H & V established minimum contacts with Louisiana under that theory.

However, under the facts of this case, we find it unnecessary to adopt either the stream of commerce or the stream of commerce plus theory. We note that the stream of commerce theory with regard to manufacturers is dicta in ***World-Wide Volkswagen*** and is not binding law. Further, the attempted modification [stream of commerce plus theory] led by Justice O'Connor in ***Asahi*** did not receive enough votes to make it law. Therefore, we have no Supreme Court precedent that guides us as to which theory, if either, represents the law. Nevertheless, we can decide this case without regard to either theory.

The facts presented in this case show that H & V and Lorillard had a much closer relationship than that of a general component part manufacturer supplying parts to an end product manufacturer, as was the case in ***Asahi***. Specialties was incorporated in February of 1952 as a wholly-owned subsidiary of H & V. In February of 1952, Specialties signed an exclusive contract with Lorillard for the purchase of filter material,[8] which allegedly contained

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[8] The federal appeals court in ***Lesnick v. Hollingsworth & Vose***, 35 F.3d 939, 946 (4th Cir. 1994), a case similar to the case at bar, summarized the relationship between H & V and Lorillard as follows:

> H & V and Lorillard entered a contract under which the two jointly owned the patent to the Micronite filter and agreed to share information about technical advances in the field. . . . The two also shared equally

crocidolite asbestos. Specialties manufactured and shipped the filter material from its plants in Massachusetts to Lorillard's manufacturing plants in New Jersey and Kentucky where it was incorporated into the Kent Micronite Filter cigarettes. The total amount of filter material shipped by Specialties to Lorillard is not clear, but the record contains evidence that from 1952 to 1956, Specialties shipped enough filter material to Lorillard in order for Lorillard to incorporate the filter material into thirteen billion Kent Micronite Filter cigarettes. As evidence of the voluminous character of this relationship, the record shows that from January 1, 1955 to August 22, 1955, Specialties produced 7,065 rolls of the filter material and Lorillard consumed 12,532 rolls of the filter material. Further, Lorillard's approximate daily consumption in 1955 was 80 rolls, while Specialties average daily production was 68 rolls.[9] In order to remedy this difference

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> the costs of developing the filter, including the costs of creating manufacturing facilities, and they agreed to share any royalties they might earn from licensing the process. In addition, the price Lorillard paid for the filters was a multiple of H & V's cost, with Lorillard given a right to inspect production and financial records. H & V agreed to sell filter material for tobacco use only to Lorillard for at least five years of their dealings. Finally, Lorillard agreed to indemnify H & V for any liabilities arising from harmful effects of the product.

In Lesnick, however, the Fourth Circuit adopted the "stream of commerce plus" theory and found that H & V's conduct did not meet that test.

[9] Because consumption of Specialties' filter material was greater than its production, the record suggests that Lorillard's resolution of this problem could only be solved by Specialties operating two shifts to increase daily production to 90 rolls.

between consumption and production, Lorillard was forced to use its and Specialties' reserve inventories.

Moreover, between 1952 and 1956, the Kent Micronite Filter cigarette was extensively advertised in both the print and television media. All the advertisements centered around the "Micronite" filter, the benefits of the filter, and the fact that Kent Micronite Filter cigarettes were made "with [the] exclusive Micronite Filter."[10] The print advertisement was found in such nationally distributed mediums as *Life Magazine*. Further, the Kent Micronite Filter cigarette was advertised on nationally broadcasted television programs in the 1950s.

Thus, one of the prime selling points of the Kent Micronite Filter cigarette was the filter – the alleged injury causing product manufactured by Specialties, sold in massive quantities to Lorillard by Specialties, and incorporated as a substantial and integral component part of the Kent Micronite Filter cigarettes.

Accordingly, H & V, or its subsidiary, made a single product for a single purpose for a single customer for a

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[10] An example of the print advertisement emphasizing these selling points was found in the April 19, 1954 edition of *Life*. The advertisement read:

> The American Medical Association voluntarily conducted in their own laboratory a series of independent tests of filters and filter cigarettes. As reported in the Journal of American Medical Association, these tests proved that of all the filter cigarettes tested, one type was the most effective for removing tars and nicotine. This type filter is used by Kent . . . and only by Kent!

period of five years. Lorillard focused on H & V's "exclusive Micronite Filter" as the chief feature in virtually all of Kent cigarette advertising and forcefully distributed that product into the national marketplace. H & V knew and intended that the Kent cigarette with the "Micronite Filter" would be sold by Lorillard on a large scale basis nationwide. Thus, in our view considering all these factors, H & V "purposefully avail[ed] itself of the privilege of conducting activities within [this state]." ***Burger King v. Rudzewicz***, *supra*, 471 U.S. at 475. Undoubtedly, through this purposeful availment, H & V "should reasonably anticipate being haled into court" in Louisiana.[11] ***World-Wide Volkswagen***, *supra*, 444 U.S. at 297.

Fair Play and Substantial Justice

Even if minimum contacts exist, the exercise of personal jurisdiction over a nonresident defendant will fail to satisfy due process requirements if the assertion of

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[11] Defendant's argument that our prior decision in McBead, *supra*, requires a different result is misplaced. Although in McBead the nonresident component parts manufacturer's activity was more specifically directed at Louisiana than is H & V's, in that it sold the drilling rig, to which it had added component parts, directly to the plaintiff in the Ark-La-Tex region and then sent a service representative into Louisiana to service the rig at the time the rig collapsed, we did not predicate our finding of jurisdiction on the establishment of "additional conduct" as required by Justice O'Connor in ***Asahi***. In fact, we noted that "while the plurality opinion discussed requirement that defendant's conduct be more purposefully directed at the forum state than the mere placing of the product in the stream of commerce," the concurring justices did not subscribe to that portion of the opinion. McBead, *supra* at 433, n. 7.

jurisdiction offends "traditional notions of fair play and substantial justice." ***International Shoe***, *supra*, 326 U.S. at 316. In determining this fundamental fairness issue, we must examine (1) the defendant's burden; (2) the forum state's interest; (3) the plaintiff's interest in convenient and effective relief; (4) the judicial system's interest in efficient resolution of controversies; and (5) the state's shared interest in furthering fundamental social policies. ***Asahi***, *supra*, 480 U.S. at 112; ***World-Wide Volkswagen***, *supra*, 444 U.S. at 292.

First, H & V's burden in traveling from Massachusetts to Louisiana is considerable. Nonetheless, today's modern transportation has made it less burdensome for a party to defend himself in a state where he engages in economic activity. *See* ***McGee v. International Life Ins. Co.***, *supra*. Further, the interests of the plaintiff and the forum may "justify even the serious burdens placed on the alien defendant." ***Asahi***, 480 U.S. at 114. Unlike in ***Asahi***, where the defendant would have to travel all the way from Japan to defend against an indemnification claim brought by a Taiwanese corporation based on a transaction that took place in Taiwan, here, the corporate defendant will only have to travel within the United States to defend against a claim brought by a Louisiana plaintiff based on an injury that occurred in Louisiana.

Second, Louisiana has a significant interest in adjudicating a dispute that involves a sale of an allegedly defective product to a Louisiana consumer where that product causes a personal injury in this state. *See* ***McBead***, *supra* at 432. This is in stark contrast to the facts of ***Asahi***, where the state of California had little interest

in an indemnity claim involving non-California parties. The continued presence of the injured parties and various state interests in the litigation distinguishes the case from the situation presented in ***Asahi***. Further, the Louisiana forum will bring all the parties into one courtroom for a single resolution.

Finally, in considering the shared interest of the several states in furthering fundamental substantive social policies, we must look to the procedural and substantive policies of other states whose interests are affected by the assertion of jurisdiction by this Court. Here, we have no international concerns as did the Supreme Court in ***Asahi***. The interests of the other states in providing convenient forums for parties involved in cigarette-related litigation are furthered by allowing plaintiffs to proceed against H & V and/or Specialties in Louisiana.

CONCLUSION

We find that H & V purposefully availed itself of the privilege of conducting business in Louisiana such that it should reasonably anticipate being haled into court here by supplying all of its product only to Lorillard with the knowledge and intention that Lorillard would market and distribute the end product, which featured the "Micronite Filter" made with H & V's product, on a large-scale nationwide basis. Further, we find that the maintenance of personal jurisdiction over H & V does not offend traditional notions of fair play and substantial justice. Accordingly, H & V and/or Specialties is subject to the personal jurisdiction of this court.

DECREE

For the reasons stated herein, the judgment of the court of appeal is reversed and H & V's declinatory exception of lack of personal jurisdiction is denied. The case is remanded to the trial court for further proceedings.

REVERSED AND REMANDED.

SUPREME COURT OF LOUISIANA

98-CC-1126

Apr. 13, 1999

EVELYN DECUIR RUCKSTUHL AND RICHARD E. RUCHSTUHL

Versus

OWENS CORNING FIBERGLAS CORPORATION, ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, FIRST CIRCUIT, PARISH OF EAST BATON ROUGE

TRAYLOR, Justice, dissenting.

The business arrangement between Lorillard and H & V did not rise to the level of establishing personal jurisdiction over H & V and/or Specialties because none of its conduct was in any way directed toward Louisiana. Specialties clearly had no involvement in the manufacturing, marketing, sale, or distribution of Kent cigarettes. Its

relationship to Lorillard was that of a supplier; Specialties manufactured the bulk filter material in Massachusetts and shipped it directly to Lorillard's plants in New Jersey and Kentucky.

The majority makes a distinction without a difference when applying the law to the facts at hand. Although they proclaim to decide the case without regard to either the stream of commerce plus or stream of commerce theory, the majority clearly utilizes the latter theory. However, the Due Process Clause requires that the action of the defendant to be more purposefully directed at the forum State than the mere act of placing a product in the stream of commerce. The United States Supreme Court has reiterated this principle throughout the years, providing further insight into the concept of minimum contacts. *See Superior Supply Co. v. Assoc. Pipe & Supply Co.*, 515 So.2d 790 (La.1987). In *World-Wide Volkswagen Corp. v. Woodson*, 100 S.Ct. 559 (1980), the Court expounded on the principles enunciated in *International Shoe Co. v. Washington*, 66 S.Ct. 154 (1945), by rejecting the notion that foreseeability based on a "mere likelihood" that a product would find its way to the forum state could establish jurisdiction, stating instead that the person should "reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp.*, 100 S.Ct. at 567. *World-Wide Volkswagen Corp.*, fairly read, requires a greater connection to the forum state than selling chattel that might foreseeably arrive there through the acts of another person, thereby indicating that the Court has not abandoned the notion that jurisdiction must rest on a person's activity deliberately directed toward the forum state.

The Court in *Burger King Corp. v. Rudzewicz*, 105 S.Ct. 2174, 2183-84 (1985), later held jurisdiction to be proper when the defendant's contacts "result from actions by the defendant *himself* that create a 'substantial connection' with the forum State." Specifically, the Court held that an individual's contract with an out-of-state party alone could not establish minimum contacts in the other party's home forum. *Burger King Corp.*, 105 S.Ct. at 2185. Rather, the Court required an evaluation of prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing before a determination could be made whether the defendant purposefully established minimum contacts with the forum. Simply stated, the Court rejected a mechanical interpretation of the minimum contacts required to confer personal jurisdiction. *Id.* Instead, it relied upon the quality and nature of the activity to determine whether such contacts justify the state's exercise of its judicial power over the person. *International Shoe Co. v. Washington*, 66 S.Ct. at 160. Most recently, Justice O'Connor, joined by Chief Justice Rehnquist and Justices Powell and Scalia, of the *Asahi* Court, held that "minimum contacts" requires the defendant to act purposefully toward the forum state, thereby mandating much more of the defendant than mere knowledge of the product's entry into the forum state through the stream of commerce. *Asahi Metal Ind. v. Super. Ct. of Cal., Solano City*, 107 S.Ct. 1026, 1032 (1987).

Specialties' placement of the bulk filter material into the stream of commerce, without other conduct directed toward Louisiana, is not an act purposefully directed

toward Louisiana. *Asahi Metal Ind.*, 107 S.Ct. at 1032.[1] Even though Specialties may have been aware that the stream of commerce would sweep its filter media into other states, such cognizance does not convert the mere act of placing the product into the stream into an act purposefully directed toward every state to which Kent cigarettes were distributed. *Id.* Due Process requires that the defendant *himself* have contacts with the forum state such that a "substantial connection" is created. Only then will jurisdiction be proper. *Asahi Metal Ind.*, 107 S.Ct. at 1030; *Burger King Corp.*, 105 S.Ct. at 2183-84.

By requiring that individuals have "fair warning" that a particular activity may subject them to the jurisdiction of a foreign sovereign, the Due Process Clause gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit. *World-Wide Volkswagen Corp.*, 100 S.Ct. at 567; *Burger King Corp.*, 105 S.Ct. at 2182. When a forum seeks to assert specific jurisdiction over an out-of-state defendant who has not consented to suit there, this "fair warning" requirement is satisfied if the defendant has purposefully directed his activities at residents of the forum, and the litigation

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[1] *Asahi* provides four examples of additional conduct that may indicate an intent or purpose to serve the market in the forum State: (1) designing the product for the market in the forum State; (2) advertising in the forum State; (3) establishing channels for providing regular advice to customers in the forum State; (4) marketing the product through a distributor who has agreed to serve as the sales agent in the forum State. *Asahi*, 107 S.Ct. at 1032.

results from alleged injuries that arise out of or relate to those activities. *Burger King Corp.*, 105 S.Ct. at 2182. Without such notice, defendants could not alleviate the risk of litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State. *World-Wide Volkswagen Corp.*, 100 S.Ct. at 567. To permit a state to assert jurisdiction over any person whose product is sold in the state simply because a person may expect that to happen subjects defendants to judgment in locations based on the activity of third persons and not the deliberate conduct of the defendant, making it impossible for defendants to plan and structure their business contacts and risks. *Lesnick v. Hollingsworth & Vose Co.*, 35 F.3d 939, 945 (4th Cir. 1994).

While the total volume of Lorillard's national sales from 1952 to 1956 perhaps made it foreseeable that Lorillard might sell some portion of its cigarettes in Louisiana, "the foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum state. Rather, it is that the defendant's *conduct and connection* with the forum state are such that he should reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp.*, 100 S.Ct. at 567. A manufacturer's conduct must evidence an effort to serve the forum market before the manufacturer can reasonably anticipate being haled into court there. *Id.* Otherwise, defendants may be subject to the caprice of third persons, thereby stripping them of the protections the Due Process Clause was designed to ensure.

Although the case might be different if H & V had changed production to comply with Louisiana regulations or if it had set up a customer relations network there, *Asahi*, 107 S.Ct. at 1032, all of the contacts between Lorillard and H & V relate only to H & V's agreement to supply filters from its plant in Massachusetts to Lorillard in Kentucky and New Jersey. Because Specialties' contacts with Louisiana are attenuated to the point that it should not have reasonably anticipated being haled into court in Louisiana, H & V and/or Specialties is not amenable to personal jurisdiction in Louisiana. Accordingly, I respectfully dissent.

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 97 CW 1132

EVELYN DECUIR RUCKSTUHL AND
RICHARD E. RUCKSTUHL

VERSUS

OWENS CORNING FIBERGLAS CORPORATION, ET AL

Judgment rendered: February 20, 1998

* * *

On appeal from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Docket No. 435,249

Honorable J. Michael McDonald, Judge

* * *

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* * *

BEFORE: CARTER, FITZSIMMONS AND CHIASSON,[1] JJ.

CHIASSON, J. *Pro Tempore*

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[1] Judge Remy Chiasson, retired, is serving as judge *pro tempore* by special appointment of the Louisiana Supreme Court.

Evelyn and Richard Ruckstuhl, residents of East Baton Rouge Parish, Louisiana, filed suit against several defendants, alleging Mrs. Ruckstuhl was diagnosed with malignant mesothelioma, a form of lung cancer, in March 1996, as a result of asbestos exposure from two sources: (1) from work clothes worn by Mr. Ruckstuhl while he was employed at the Baton Rouge Exxon refinery; and (2) from Kent cigarettes smoked by her from 1952-1956, which contained crocidolite asbestos in their "Micronite" filters. The petition alleges that defendant, Hollingsworth & Vose Company (H & V), and/or a wholly owned subsidiary, manufactured a component part of Kent cigarettes, specifically the asbestos-containing filter material used by Lorillard Tobacco Company (Lorillard) to make filters for Kent cigarettes from approximately 1952-1956.

H & V, a Massachusetts corporation, filed an exception of lack of personal jurisdiction, asserting that the exercise of in *personam* jurisdiction over it violated due process. In connection with its exception of lack of personal jurisdiction, H & V filed an affidavit executed by Paul Walker, Director of Regulatory Affairs at H & V. According to the affidavit, from early 1952 until May 1956, "filter media" was manufactured in Massachusetts by a wholly owned-subsidiary of H & V (which merged with H & V in 1957) and shipped to Lorillard's manufacturing plants in New Jersey and Kentucky to be used in the Kent Micronite filter. The affidavit also states that H & V never sold, delivered or advertised its "filter media" in Louisiana, did not design the "filter media" for any Louisiana market, does not and never has maintained an office in Louisiana, does not have any Louisiana

employees, does not maintain a bank account in Louisiana, and is not registered or licensed to do business in Louisiana.

In opposition to relator's exception, plaintiffs filed a memorandum contending they had not had a sufficient opportunity to fully investigate contacts H & V might have with Louisiana. Additionally, plaintiffs argued that H & V clearly "delivered its product into the stream of commerce with the expectation that its filters would be purchased along with the Kent cigarettes in Louisiana" since approximately 13 billion Kent cigarettes were sold during this period containing "the Micronite filters with the asbestos manufactured by H & V." Plaintiffs further point out that the Kent Micronite filter was extensively advertised nationally, both in print and on television.

Following argument of counsel, the trial court dismissed relator's exception. Relator filed the instant writ application and plaintiffs filed an opposition.

LEGAL PRINCIPLES

In reviewing a ruling on an exception of lack of personal jurisdiction over a nonresident by a Louisiana court, an appellate court must conduct a "de novo" review of the legal issue of personal jurisdiction. *Hunter v. Meyers*, 96-1075 (La. App. 1st Cir. 3/27/97), 691 So.2d 318, 320.

Since the 1987 amendment to LSA-R.S. 13:3201, which added subsection (B), extending Louisiana's long-arm jurisdiction to the limits allowed by due process, the sole inquiry into personal jurisdiction over a nonresident

involves an analysis of the constitutional due process requirements. *Superior Supply Company v. Associated Pipe and Supply Company,* 515 So.2d 790, 791-792 (La. 1987).

Due process requires, in order to subject a nonresident defendant to a personal judgment, that: (1) the defendant must have certain minimum contacts with the forum state,[2] and (2) the maintenance of the suit does not offend traditional notions of fair play and substantial justice. *International Shoe Co. v. Washington,* 326 U.S. 310, 320, 66 S.Ct. 154, 160, 90 L.Ed. 95 (1945); *de Reyes v. Marine Management and Consulting, Ltd.,* 586 So.2d 103, 105 (La. 1991). Under this two-part test, the burden of showing minimum contacts lies with the party claiming jurisdiction is proper. Once this burden is met, a presumption of reasonableness of jurisdiction arises. The burden then shifts to the opposing party to prove that the assertion of jurisdiction would be so unreasonable in light of traditional notions of fair play and substantial justice as to overcome the presumption of reasonableness created by

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[2] The "minimum contacts" prong of the test can be broken down into two types of personal jurisdiction, specific and general. A state exercises "specific jurisdiction" over a nonresident defendant when the lawsuit arises from or relates to the defendant's contact with the forum state. A single act by the defendant directed at the forum state, therefore, can be enough to confer personal jurisdiction if that act gives rise to the claim being asserted. In contrast, when the act or transaction being sued upon is unrelated to the defendant's contacts with the forum state, personal jurisdiction does not exist unless the defendant has sufficient "continuous and systematic contacts" with the forum state to support an exercise of "general jurisdiction." *Ruston Gas Turbines, Inc. v. Donaldson Company, Inc.,* 9 F.3d 415, 419 (5th Cir. 1993).

the defendant's minimum contacts with the forum, *de Reyes*, 586 So.2d at 107.

In cases involving personal jurisdiction over the manufacturer of a defective product the jurisprudence is split between the "stream of commerce" theory enunciated in *World-Wide Volkswagen Corporation v. Woodson*, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980), and the "stream of commerce plus" theory enunciated in *Asahi Metal Industry Co., Ltd. v. Superior Court of California, Solano County*, 480 U.S. 102, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987).

In *World-Wide*, the United States Supreme Court concluded that a forum state does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that it will be purchased by consumers in the forum state. 444 U.S. at 297-98, 100 S.Ct. at 567. Hence the "stream of commerce" theory was born. The Court held that an Oklahoma court did not have personal jurisdiction over nonresident corporations whose only connection with Oklahoma was the sale of a car in New York that was involved later in an accident in Oklahoma. The Supreme Court rejected the plaintiffs' argument that jurisdiction was proper because of the mobile nature of the automobile and the foreseeability that some cars sold by corporations in New York might find their way to Oklahoma. 444 U.S. at 295, 100 S.Ct. at 566. However, the Court went on to point out a critical distinction between a retailer and a manufacturer of a product concluding that when the sale of a product is by a manufacturer or distributor, and is not simply an isolated occurrence, and the sale "arises from

the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others." 444 U.S. at 297, 100 S.Ct. at 567.

In *Asahi*, a plurality of the Supreme Court attempted to narrow the *World-Wide Volkswagen* criteria for personal jurisdiction under the stream of commerce theory by requiring more than the mere placing of a product into the stream of commerce which would foreseeably enter the forum state.

In *Asahi*, the plaintiff was injured in a motorcycle accident which occurred in California. He sued the Taiwanese manufacturer of the motorcycle tire tube and the Japanese manufacturer of the tube's valve assembly. After the plaintiff settled his claims, the only remaining claim was the indemnity claim between the foreign manufacturers. The Supreme Court held California courts could not exercise personal jurisdiction over the Japanese manufacturer of the valve assembly. Assuming *arguendo* that the manufacturer of the valve assemblies knew some of them would be incorporated into tire tubes sold in California, the plurality opinion authored by Justice O'Connor reasoned that the defendant's conduct, nevertheless, must be more purposefully directed at the forum state than merely placing the product into the stream of commerce. The plurality opinion states:

> The placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the

> forum State. Additional conduct of the defendant may indicate an intent or purpose to serve the market in the forum State, for example, designing the product for the market in the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State. *But a defendant's awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum State.* (Emphasis added.)[3]

480 U.S. at 112, 107 S.Ct. at 1032.

Although the Fifth Circuit Court of Appeals has expressly rejected the *Asahi* plurality's "stream of commerce plus" theory in favor of its interpretation of "the stream of commerce" test enunciated in World-Wide,[4] we believe the *Asahi* approach more accurately reflects the

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[3] The concurring justices expressly did not subscribe to that portion of the opinion pertaining to the stream of commerce, but agreed with the determination that the exercise of jurisdiction did not comport with fairness and substantial justice because of the insufficient relationships among the California forum, the Japanese corporate defendant, and the litigation of the indemnity issue. 480 U.S. at 116, 107 S.Ct. at 1034

[4] The Fifth Circuit maintains that "mere foreseeability or awareness [is] a constitutionally sufficient basis for personal jurisdiction if the defendant's product made its way into the forum state while still in the stream of commerce." *Ruston Gas Turbines, Inc. v. Donaldson Company, Inc.*, 9 F.3d 415, 419 (5th Cir. 1993); *See Bean Dredging Corp. v. Dredge Technology Corp.*, 744 F.2d 1081, 1085 (5th Cir. 1984).

due process protections afforded under the United States Constitution and more closely comports with the purposes of due process.

In the instant case the defendant H & V is the manufacturer of a component part of the filter which was used in the making of a Kent cigarette. The analogy between H & V and Japanese manufacturer of the valve assembly in *Asahi* is clear. H & V's subsidiary manufactured "filter media" in Massachusetts from early 1952 until May 1956, and shipped it to Lorillard's manufacturing plants in New Jersey and Kentucky. Kent used the filter media to manufacture the Micronite filter, which it put in its cigarettes. H & V never sold, delivered, or advertised its "filter media" in Louisiana, did not design the "filter media" for any Louisiana market, does not and never has maintained an office in Louisiana, does not have any Louisiana employees, does not maintain a bank account in Louisiana, and is not registered or licensed to do business in Louisiana.

Plaintiffs argued that H & V "delivered its product into the stream of commerce with the expectation that its filters would be purchased along with the Kent cigarettes in Louisiana." Plaintiffs further contend that approximately 13 billion Kent cigarettes containing the Micronite filters were sold in Louisiana during this period and that the Kent Micronite filter was extensively advertised nationally, both in print and on television.

Minimum contacts are established when the nonresident defendant "purposefully avails itself of the privilege of conducting activities within the forum state." *Burger King Corporation v. Rudzewicz*, 471 U.S. 462, 475,

105 S.Ct. 2174, 2183, 85 L.Ed.2d 528 (1985), quoting *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 1239-1240, 2 L.Ed.2d 1283 (1958). Purposeful availment may occur when a corporation delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum state. *World-Wide*, 444 U.S. at 298, 100 S.Ct. at 567. However, it is important to remember that "the foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum state. Rather, it is that the *defendant's conduct and connection with the forum* State are such that he should reasonably anticipate being haled into court there." (Emphasis ours.) *World-Wide*, 444 U.S. at 297, 100 S.Ct. at 567. Consequently, a defendant's awareness that the stream of commerce may or will sweep the product into the forum state does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum state. *Asahi*, 480 U.S. at 112, 107 S.Ct. at 1032.

Applying the aforestated principles to the facts of the present case, we conclude that the plaintiff failed to prove that H & V established sufficient minimum contacts with Louisiana. The only conduct of H & V directed toward Louisiana was the placement of the filter media into the stream of commerce. The evidence does not indicate an intent or purpose by H & V to specifically serve the Louisiana market.[5]

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[5] In *Lesnick v. Hollingsworth & Vose Co.*, 35 F.3d 939, 946-47, (4th Cir. 1994), *cert. denied*, 513 U.S. 1151, 115 S.Ct. 1103, 130 L.Ed.2d 1070 (1995), a factually identical case, the court found no personal jurisdiction existed over H & V, concluding that the

For the reasons set forth, the writ is granted. The trial court ruling denying the exception of lack of personal jurisdiction is reversed, and judgment is rendered in relator's favor, granting the exception and dismissing relator as a defendant. We assess costs to the plaintiffs.

REVERSED.

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mere sale, by H & V to Lorillard, of filter material "does not rise to the level of establishing jurisdiction because none of the conduct is in any way directed *toward the State of Maryland." See also Hunt v. Schult Homes Corporation*, 94-1592 (La. App. 3rd Cir. 5/3/95), 657 So.2d 124, wherein the court found that a Texas manufacturer of particle board, used in the fabrication of mobile homes in Texas, lacked sufficient contacts with Louisiana to justify personal jurisdiction over the component part manufacturer.

NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

EVELYN DECUIR RUCKSTUHL and RICHARD E. RUCKSTUHL	*	NUMBER 435,249 DIVISION H
VERSUS	*	JUDGMENT ON
OWENS-CORNING FIBERGLAS CORPORATION, ET AL.	*	EXCEPTION (May 8, 1997)

This matter came before the Court pursuant to a declinatory exception of lack of personal jurisdiction filed by the defendant, Hollingsworth & Vose Company.

The Court considering the law, the evidence, and the argument of counsel, for reasons orally assigned:

IT IS ORDERED, ADJUDGED AND DECREED that the declinatory exception of lack of personal jurisdiction filed by the defendant, Hollingsworth & Vose Company, be dismissed at the cost of the moving defendant.

JUDGMENT RENDERED the 5th day of May, 1997.

JUDGMENT READ AND SIGNED the 9th day of May, 1997, at Baton Rouge, Louisiana.

/s/ J. Michael McDonald
JUDGE, 19TH JUDICIAL
DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

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EVELYN DECUIR RUCKSTUHL	:	No. 435,249, DIV. "h"
VERSUS	:	19TH JUDICIAL DISTRICT COURT
OWENS-CORNING, ET AL.	:	PARISH OF EAST BATON ROUGE
	:	STATE OF LOUISIANA

ORAL REASONS FOR JUDGMENT
MONDAY, MAY 05, 1997
THE HONORABLE J. MICHAEL MCDONALD,
JUDGE PRESIDING

BY THE COURT:

BOTH SIDES HAVE MADE VERY PERSUASIVE ARGUMENTS IN THIS CASE. THE FACT IS THAT HOLLINGSWORTH AND VOSE DID MANUFACTURE THIS MATERIAL THAT WAS THEN MADE INTO THE FILTER

THAT LORILLARD PUT OR USED IN KENT CIGARETTES AND SOLD THIRTEEN BILLION KENT CIGARETTES AROUND THE WORLD. HOLLINGSWORTH AND VOSE DO NOT HAVE ANY BUSINESS IN LOUISIANA; THEY DON'T ACTIVELY ADVERTISE AND SELL THEIR PRODUCT IN LOUISIANA. THEY WERE NOT THE ONES THAT WERE ADVERTISING TO SELL THIS MATERIAL. IT WAS LORILLARD WHO WAS ADVERTISING THE SALE OF KENT CIGARETTES WITH THE "MICRONITE FIILTER", WHICH IS THE MARKETING NAME THAT SOMEBODY GAVE TO THESE FILTERS. SO IT WASN'T ACTUALLY HOLLINGSWORTH AND VOSE DOING THIS ADVERTISING AND BUSINESS IN LOUISIANA. BY THE SAME TOKEN, THEY CERTAINLY MADE THIS MATERIAL AND SOLD IT KNOWING THAT IT WAS GOING TO BE USED AS FILTERS IN THESE CIGARETTES AND KNOWING THAT THESE CIGARETTES WOULD BE VASTLY MARKETED AROUND THE COUNTRY AND AROUND THE WORLD. WHETHER THEY THOUGHT THAT SOME OF THEM WOULD END UP IN LOUISIANA OR NOT, I DON'T KNOW. THE AMERICAN VALVE CASE IS THE ONE THE COURT FEELS IS MOSTLY APPLICABLE TO THIS CASE AND INTERESTINGLY ENOUGH BOTH SIDES THINK THAT AMERICAN VALVE SUPPORTS THEIR POSITION. IN THIS COURT'S OPINION, AMERICAN VALVE SUPPORTS THE POSITION OF THE PLAINTIFF, AND THE COURT IS GOING TO DENY THE MOTION.

(FILED OCT. 21, 1997)

Supreme Court, U.S.
FILED
OCT 22 1999
OFFICE OF THE CLERK

No. 99-92

In The
Supreme Court of the United States

HOLLINGSWORTH & VOSE COMPANY,
Petitioner,

v.

EVELYN DECUIR RUCKSTUHL and
RICHARD E. RUCKSTUHL,
Respondents.

On Petition For Writ Of Certiorari
To The Supreme Court of Louisiana

BRIEF FOR RESPONDENTS, EVELYN DECUIR RUCKSTUHL and RICHARD E. RUCKSTUHL

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SUMMARY OF ARGUMENT

The Petition for Writ of Certiorari filed by Hollingsworth & Vose Company ("H&V") requests this Court to more clearly define the constitutional test for determining when a State may validly exercise personal jurisdiction over a non-resident manufacturer. Without doubt, the two-prong test of the Due Process Clause has been a prolific source of jurisprudential and doctrinal discussion and debate, resulting in continued uncertainty as to its true application. Indeed, the intensity of the debate has only increased since Asahi Metal Industry Co. v. Superior Court, 480 U.S. 102, 107, S.Ct. 1026, 94 L.Ed. 92 (1987) was rendered. Although respondents agree that guidance from this Court would settle a point of conflict among the United States Courts of Appeal and some state courts of last resort, respondents do not agree that the issue can be adequately resolved by granting writs in *this* case.

The relationship between petitioner and Lorillard Tobacco Company ("Lorillard") was not typical of the arrangement found between most component part manufacturers and their respective end-product manufacturers/buyers. In fact, it is the very uniqueness of petitioner's relationship with Lorillard that would cloud any resolution made by this Court. The lower courts would be left to ponder whether, and if so, to what extent, the *relationship* between a component part manufacturer (here, H&V) and its end-product manufacturer (here, Lorillard) plays a role in establishing "minimum contacts" with the forum state. To circumvent such speculation, the Court would have to affirmatively state that the relationship between the two entities is irrelevant. But such a categorical statement might then foreclose a future opportunity for this Court to review the relationship issue in a case where the issue might play a more pivotal role.

Again, respondents agree with petitioner that the constitutional test for determining when a state court may validly exercise personal jurisdiction over a non-resident manufacturer

should be more clearly defined by this Court. Ideally, however, elucidation should emanate from a case that presents the Court with a clean set of facts. Although the instant case is attractive in that Louisiana's exercise of personal jurisdiction over H&V can be justified under either the "stream of commerce" theory or the "stream of commerce plus" theory, the Court would be forced to grapple with the question of whether, and to what extent, Lorillard's actions can be attributed to H&V in light of their unique contractual relationship. A protracted discussion of the parties' interrelationship would only serve to further complicate an already complex analysis.

ARGUMENT

In upholding the district court's conclusion that Louisiana has personal jurisdiction over H&V, the Louisiana Supreme Court found it "unnecessary to adopt either the stream of commerce theory or the stream of commerce plus theory." Ruckstuhl v. Owens-Corning Fiberglas Corp., 731 So.2d 881, 889 (La. 1999). Instead, the court determined that the jurisdiction question could be decided "without regard to either theory" and then commenced to describe the unique relationship that existed between H&V and Lorillard Tobacco Company. *Ibid.*

According to the court, H&V and Lorillard had a "much closer relationship than that of a general component part manufacturer supplying parts to an end product manufacturer." *Ibid.* Indeed, the court made it clear that H&V and Lorillard were intimately connected. The two companies had entered into an *exclusive* five-year contract that precluded H&V from selling its filter material to any entity other than Lorillard. Their agreement further had the two companies *sharing* profits and liabilities; they *jointly* owned the patent to the filter; they *split* the costs associated with designing and erecting the manufacturing facilities; and Lorillard agreed to *indemnify* H&V for any liability H&V might incur as a result of defects in its filter product. *Ibid.* n. 8. In short, the relationship between

H&V and Lorillard was more akin to a partnership than the typical buy/sell arrangement between manufacturers.

The Louisiana Supreme Court continued by noting that Lorillard extensively advertised the Kent Micronite Filter in both the print and television media. The advertisements targeted consumers nationwide and primarily focused on the relative health attributes of the Micronite filter that was attached to Kent cigarettes. *Id.*, at 889-90. Clearly, the court concluded that the close relationship between H&V and Lorillard makes it a practical impossibility to segregate one entity's action from the other's. Consequently, the court implicitly deemed the marketing and distribution efforts attributed to Lorillard to be equally attributable to H&V. Thus, the court held that H&V had purposely availed itself of the privilege of conducting activities in Louisiana. *Id.*, at 890.

Respondents submit that the facts of the present case do not provide this tribunal with a clean record from which it may embark upon an analysis of what constitutes "minimum contacts." Rather, the relationship between petitioner and Lorillard blurs any distinction between the actions taken by Lorillard and the actions taken by H&V. A clear opinion on minimum contacts can only be rendered when each party's identity and actions are separable from one another, such is not the case in the matter currently before the bar.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari filed on behalf of Hollingsworth & Vose Company should be denied.

Respectfully Submitted,

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